Mohd Shaiful bin Saad v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO P-05(S) 108–04 OF 2014
BALIA YUSOF, ROHANA YUSUF AND UMI KALTHUM JJCA
10 FEBRUARY 2015

Criminal Procedure — Appeal — Appeal against conviction and sentence — Principal offence of drug trafficking — 204.26g of cannabis found during raid — Appellant pleaded guilty to alternative charge — Trial judge accepted guilty plea to alternative charge and found appellant guilty and convicted him — Whether plea of guilty had mitigating effect since it was not made at outset of trial — Whether trial judge failed to observe sentencing trend in relation to offence under s 6 punishable under s 39A(2) of the Dangerous Drugs Act 1952 — Dangerous Drugs Act 1952

The police had conducted a raid at a house and found the front door closed and locked. He knocked at the door several times while identifying himself as the police. The appellant opened the door and the complainant identified himself again as the police to the appellant. Upon entering the house, the complainant conducted a body search on the appellant and found nothing incriminating. The complainant then together with the appellant went into a room in the house where the complainant found an orange coloured bag containing a chopping wood block, a knife with wooden handle and several clear plastic packets. The appellant also pointed the complainant to a water thermos brand Global. The complainant opened its cover and found one red plastic bag containing a large compressed dried leaves slab wrapped in aluminum foil suspected to be dangerous drug and two small plastic packets each containing two small slabs of compressed dried leaves suspected to be dangerous drug. The dried leaved were sent to the Chemist Department and were confirmed to be 204.26g of cannabis. The principal charge was for an offence of drug trafficking under s 39B of the Dangerous Drugs Act 1952. On the first hearing date, the prosecution tendered the original charge and the alternative charge to the court. P2 was read and explained to the appellant and the appellant claimed trial. At the same time the appellant's counsel requested for P3 to be read to the appellant on another date. The prosecution proceeded with the opening statement and called his first witness to testify. On another date, the appellant's counsel requested for the alternative charge to be read to the appellant. After the alternative charge was amended, it was read to the appellant. The appellant pleaded guilty to the alternative charge. The trial judge accepted his plea of guilty to the alternative charge and found the appellant guilty and convicted him. Being dissatisfied with the decision of the trial judge, the appellant appealed against his sentence on the issues that the trial judge had erred in

deciding that although the appellant had pleaded guilty on the alternative charge, the appellant's plea of guilty had no mitigating effect since it was not made at the outset of the trial; and the trial judge had failed to observe the trend of sentencing in relation to offence under s 6 punishable under s 39A(2) of the Act.

Held, dismissing the appeal; affirming the decision of the High Court:

(1) The alternative charge was tendered in court by the prosecution on the first day of the trial. The appellant requested for the alternative charge to be read to the appellant on another date and the case went on with the trial. Since the appellant opted to claim trial on the principal charge and keeping in abeyance the alternative charge, the appellant's subsequent plea of guilty after trial had commenced was not a mitigating factor in the determination of sentence/ punishment (see para 17).

(2) Although the appellant's plea of guilty was made at the early stage of trial and after only one witness was called, the appellant had only applied for the alternative charge, to be read and explained to the appellant be deferred to another date. The appellant did not apply for the hearing on the principal charge be deferred/postponed to the same date as the alternative charge. The case was fixed for trial for two days. The appellant could have applied for a short adjournment to the next day in order to consider the alternative charge and give instructions to his counsel (see para 18).

(3) Heavy punishment should be given to drug-related offence. The trial judge had correctly imposed a heavy punishment on the appellant in this case. This is in line with the amendment to the life imprisonment term under s 39A(2) of the Act which had been amended by the Criminal Justice (Amendment) Act 2007. Therefore the punishment of 13 years imprisonment and 10 strokes whipping from the date of arrest was a clear reflection of the seriousness of the crime committed by the appellant. The trial judge in arriving at the appropriate sentence had considered the interests of the public which requires a deterrent sentence on the appellant considering the weight of the drugs in this case (see para 23).

(4) The fact that the appellant was a first offender and the other mitigating factors raised by him had also been considered by the trial judge. The trial judge had applied the correct principles of sentencing to the appellant. As such, there was no ground to disturb the sentence imposed by the judge. As for the appellant's request that he be given more strokes of whipping for a lesser term of imprisonment, there was no reason to disturb the finding of the trial judge (see para 24).

[Bahasa Malaysia summary

Pihak polis telah menjalankan satu serbuan di sebuah rumah dan mendapati pintu hadapan tertutup dan berkunci. Dia mengetuk pintu beberapa kali sambil memperkenalkan dirinya sebagai polis. Perayu membuka pintu dan pengadu memperkenalkan dirinya sekali lagi sebagai polis kepada perayu. Ketika memasuki rumah, pengadu menjalankan carian badan atas perayu dan mendapati tiada apa-apa yang menyalahi undang-undang. Pengadu kemudian bersama-sama perayu masuk ke dalam bilik di mana pengadu mendapati sebuag beg berwarna oren yang mengandungi blok kayu mencincang, pisau dengan pemegang kayu dan beberapa paket plastik lutsinar. Perayu juga menunjukkan pengadu kepada termos air bercap Global. Pengadu membuka penutupnya dan mendapati satu beg plastik merah yang mengandungi sejumlah besar papak daun kering mampat dibalut dengan kerajang aluminium disyaki dadah berbahaya dan dua paket plastik kecil yang masing-masing mengandungi dua ketulan kecil daun kering mampat disyaki dadah berbahaya. Daun kering dihantar ke Jabatan Kimia dan disahkan adalah 204.26g kanabis. Pertuduhan utama adalah untuk kesalahan pengedaran dadah di bawah s 39B Akta Dadah Berbahaya 1952. Pada hari perbicaraan pertama, pendakwaan mengemukakan pertuduhan asal dan pertuduhan alternatif kepada mahkamah. P2 dibaca dan diterangkan kepada perayu dan perayu menuntut perbicaraan. Pada masa yang sama peguambela perayu memohon untuk P3 dibaca kepada perayu di tarikh yang lain. Pendakwaan meneruskan dengan kenyataan pembukaan dan memanggil saksi pertama untuk memberi keterangan. Pada tarikh yang lain, peguambela perayu memohon untuk pertuduhan alternatif dibaca kepada perayu. Setelah pertuduhan alternatif dipinda, ia telah dibacakan kepada perayu. Perayu mengaku bersalah terhadap pertuduhan alternatif. Hakim perbicaraan menerima akuan bersalah pertuduhan alternatif dan mendapati perayu bersalah dan menyabitnya. Tidak berpuas hati dengan keputusan hakim perbicaraan, perayu merayu terhadap hukumannya atas isu bahawa hakim perbicaraan terkhilaf dalam memutuskan bahawa walaupun perayu telah mengaku bersalah terhadap pertuduhan alternatif, akuan bersalah perayu tidak mempunyai kesan peringanan memandangkan ia tidak dibuat pada peringkat awal perbicaraan; dan hakim perbicaraan gagal untuk menilai trend hukuman berkaitan dengan kesalahan di bawah s 6 yang boleh dihukum di bawah s 39A(2) Akta.

Diputuskan, menolak rayuan; mengesahkan keputusan Mahkamah Tinggi:

(1) Pertuduhan alternatif dikemukakan di mahkamah oleh pendakwaan pada hari pertama perbicaraan. Perayu memohon untuk pertuduhan alternatif dibaca kepada perayu pada tarikh yang lain dan kes diteruskan dibicara. Oleh kerana perayu memilih untuk menuntut perbicaraan pada pertuduhan pertama dan membiarkan pertuduhan alternatif begitu sahaja, akuan bersalah perayu yang berikutnya selepas perbicaraan

dimulakan bukanlah faktor pengurangan untuk menentukan hukuman (lihat perenggan 17).

(2) Walaupun akuan bersalah perayu dibuat di peringkat awal perbicaraan dan setelah hanya seorang saksi dipanggil, perayu hanya memohon untuk pertuduhan alternatif, untuk dibaca dan diterangkan kepada perayu ditunda ke tarikh yang lain. Perayu tidak memohon untuk pendengaran pertuduhan utama untuk ditunda/ditangguhkan ke tarikh yang sama dengan pertuduhan alternatif. Kes telah ditetapkan untuk perbicaraan untuk dua hari. Perayu boleh memohon untuk penangguhan singkat untuk keesokan hari untuk mempertimbangkan pertuduhan alternatif dan memberikan arahan kepada peguambelanya (lihat perenggan 18).

(3) Hukuman yang berat sepatutnya diberikan kepada kesalahan berkaitan dadah. Hakim perbicaraan adalah betul mengenakan hukuman berat kepada perayu dalam kes ini. Ini adalah selaras dengan pemindaan terma penjara seumur hidup di bawah s 39A(2) Akta yang mana telah dipinda oleh Akta Keadilan Jenayah (Pindaan) 2007. Oleh itu hukuman 13 tahun penjara dan 10 sebatan rotan dari tarikh tangkap adalah gambaran jelas tahap keseriusan jenayah yang dilakukan oleh perayu. Hakim perbicaraan dalam mencapai hukuman yang bersesuaian telah mempertimbangkan kepentingan awam yang memerlukan hukuman mencegah ke atas perayu mempertimbangkan berat dadah dalam kes ini (lihat perenggan 23).

(4) Fakta bahawa perayu adalah pesalah kali pertama dan factor-faktor pengurangan yang lain yag dibangkitkan olehnya juga telah dipertimbangkan oleh hakim perbicaraan. Hakim perbicaraan telah mengguna pakai prinsip yang betul dalam menghukum perayu. Oleh itu, tiada alasan untuk mengusik hukuman yang dikenakan oleh hakim. Untuk perayu memohon bahawa dia diberikan lebih sebatan rotan untuk pengurangan tempoh penjara, tiada sebab untuk mengusik dapatan hakim perbicaraan (lihat perenggan 24).]]]]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Abu Hurairah Abu Samah J-05–121–2010 (Unreported), CA (refd)
Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534; [2004] 2 CLJ 572, CA (refd)
PP lwn Abdul Halim Ishak & satu lagi [2013] 9 CLJ 559, CA (refd)
PP v Marzuki bin Kahar C-05(S)–67–2 of 2013 (Unreported), CA (refd)
PP v Ooi Teng Chian [2006] 1 MLJ 213, CA (refd)

A *Ridzuan bin Abu Shukor v PP* A-05–57–2008 (Unreported), CA (refd)
Tia Ah Leng v PP [2004] 4 MLJ 249, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 6, 39A(2), 39B

B

Appeal from: Criminal Case No 45A-34–09 of 2013 (High Court, Pulau Pinang)

Yusuf bin Md Idris (Yusuf Idris & Co) for the appellant.
C *Vikneswaran Purnshatman (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.*

Umi Kalthum JCA:

D **[1]** The appellant was convicted in the High Court of Penang on his plea of guilty to an alternative charge under s 6 of the Dangerous Drugs Act 1952 ('the Act') punishable under s 39A(2) of the same Act. The principal charge was for an offence of drug trafficking under s 39B of the Act. The charges are as follows:

E *Principal Charge (P2)*

Bahawa kamu pada 19/3/2013 jam lebih kurang 9.40 pagi, di No. 69, Jalan Maju, Taman Abdullah Fahim, 13200 Kepala Batas, di dalam Daerah Seberang Perai Utara, di dalam Negeri Pulau Pinang, telah mengedarkan dadah berbahaya iaitu Cannabis seberat 204.26 gram dan dengan itu kamu telah melakukan satu
F kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 39B(2) Akta yang sama.

Alternative charge (P3)

Bahawa kamu pada 19/3/2013 jam lebih kurang 9.40 pagi, di No. 69, Jalan Maju, Taman Abdullah Fahim, 13200 Kepala Batas, di dalam Daerah Seberang Perai
G Utara, di dalam Negeri Pulau Pinang, telah ada dalam milikan kamu dadah berbahaya jenis Cannabis seberat 204.26 gram dan dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 6 Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 39A(2) Akta yang sama.

H AT THE HIGH COURT

[2] On 29 January 2014, the first hearing date, the prosecution tendered the original charge (P2) and the alternative charge (P3) to the court. P2 was read and explained to the appellant and the appellant claimed trial. At the same
I time the appellant's counsel requested for P3 to be read to the appellant on another date. The learned deputy public prosecutor ('the deputy') proceeded with the opening statement and called his first witness Kpl Abdullah bin Hj Said (PW1) to testify. Then the trial was adjourned to 31 March 2014 and 1 April 2014 for continued hearing.

[3] On 31 March 2014, the appellant's counsel requested for the alternative charge (P3) to be read to the appellant. The learned deputy made an oral application to insert the words 'dadah berbahaya jenis' in between the words 'kamu' and 'kanabis' in P3. After P3 was amended, it was read to the appellant. The appellant pleaded guilty to the alternative charge (P3). The learned deputy then tendered the facts of the case marked as P6 and it was read out to the appellant.

[4] Based on P6, on 19 March 2013 at approximately 940 am, the complainant, Insp Mohd Hanaffi bin Mohd Ngiring with a team of policemen from the Narcotics Crime Investigation Division, Ibu Pejabat Daerah Polis Seberang Perai Utara, conducted a raid at a house No 69, Jalan Maju, Taman Abdullah Fahim, 13200 Kepala Batas. On arrival at the said address, the complainant found the front door was closed and locked. He knocked at the door several times while identifying himself as the police. The appellant opened the door and the complainant identified himself again as the police to the appellant.

[5] Upon entering the house, the complainant conducted a body search on the appellant and found nothing incriminating. The complainant then together with the appellant went into a room (the third room) in the house where the complainant found an orange coloured bag containing a chopping wood block, a knife with wooden handle and several clear plastic packets. The appellant also pointed the complainant to a water thermos brand Global. The complainant opened its cover and found one red plastic bag containing a large compressed dried leaves slab wrapped in aluminum foil suspected to be dangerous drug and two small plastic packets each containing two small slabs of compressed dried leaves suspected to be dangerous drug. The complainant then seized the exhibits and arrested the appellant. The exhibits were sent to the Chemist Department. The chemical analysis confirmed the compressed dried leaves to be dangerous drug of the type cannabis weighing 204.26g. Cannabis is as defined in s 2 of the Act.

[6] From investigations, it showed that the appellant was staying at the said house.

[7] The learned deputy then tendered the various exhs P7 to P16 into court.

[8] The appellant admitted to the statement of facts in P6 and the exhs P7 to P16 to be true.

[9] The learned trial judge accepted his plea of guilty to the alternative charge, P3, and found the appellant guilty and convicted him. In his grounds

of judgment at p 22, appeal record, the trial judge stated the following:

> If a plea of guilty is made after the commencement of the trial it may cease to have mitigating factor effect: see *PP v Dato Nallakaruppan Solaiimalgi* [1999] 2 CLJ 596. It is therefore desirous that the plea of guilty be entered at an earliest reasonable opportunity before prosecution witnesses give evidence in the trial. Only then such a plea may be considered as a meaningful mitigating factor.
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> In this case, the alternative charge, P3 under s 39A (2) was offered to the accused right from the outset of the trial. But he did not take the offer for reason best known to him and his learned counsel and instead opted for a trial.
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> Having regard to all circumstances of this case, the accused being the first offender and he pleaded guilty after the trial had commenced, the seriousness of the offence, the amount of drug and the public interest, in the exercise of my judicial discretion, as propounded in *Bhandalananda Jayatilake v PP* [1982] 1 MLJ 83, I sentenced the accused to 13 years imprisonment term wef the date of arrest ie 19 March 2013 and 10 strokes of whipping. In the light of Act 1302, I am of the considered view that it is certainly not manifestly excessive.

THE APPEAL

[10] Being dissatisfied with the decision of the learned trial judge the appellant appealed to this court against his sentence.

[11] Before us, there were two main issues raised by the learned counsel for the appellant. First, the learned trial judge had erred in deciding that although the appellant had pleaded guilty on the alternative charge, the appellant's plea of guilty had no mitigating effect since it was not made at the outset of the trial. Secondly, the learned trial judge had failed to observe the trend of sentencing in relation to offence under s 6 punishable under s 39A(2) of the Act.

[12] On the first issue, learned counsel for the appellant submitted that the appellant was only notified that there was an alternative charge under s 39A(2) of the Act offered to his client on the first date of hearing. The appellant's counsel immediately requested for an adjournment on the ground that the appellant wanted to discuss with his family before making a plea to the alternative charge. The learned trial judge however directed the learned deputy to proceed with a non-contentious formal witness. The learned deputy then called Kpl Abdullah bin Hj Saad (PW1) the store keeper to testify. There was no cross-examination by the appellant's counsel on this witness. The case was adjourned to 31 March 2014 for continued hearing. On 31 March 2014, learned counsel for the appellant made an application for the alternative charge (P3) to be read to the appellant. The appellant then pleaded guilty to P3.

[13] Learned counsel for the appellant submitted that by looking at the chronology of events, the appellant's plea of guilty must be considered as a

mitigating factor. It was the appellant's submission that the appellant was only informed of the alternative charge on the first date of hearing. Therefore the appellant should be given time to consult his family before making a plea of guilty for an offence under s 39A(2) of the Act. The appellant's plea of guilty definitely saved the court's time.

[14] The learned deputy in his reply submitted that the alternative charge was ready at the outset/beginning of the trial. When the appellant opted to claim trial on the principal charge, the prosecution had to proceed with the trial.

[15] In his submission, the learned deputy submitted that a plea of guilty in general is not an automatic right for an accused person to get a lenient sentence. To support his argument he cited the case of *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534; [2004] 2 CLJ 572 where Justice Augustine Paul JCA (as he then was) had cited several other cases on plea of guilty and stated as follows (at p 583, para f–i, p 584 at para a):

> The circumstances in which a guilty plea will not have any weight are varied. The severity of the offence committed may outweigh the mitigating effect of a guilty plea (see *Loh Hock Seng & Anor v PP* [1980] 2 MLJ 13; *PP v Oo Leng Swee & Ors* [1981] 1 MLJ 247). Where public interest demands a deterrent sentence in the circumstances of a particular case, then the effect of a guilty plea must also give way (see *Sim Gek Yong v PP* [1995] 1 SLR 537; *PP v Govindnan a/l Chinden Nair* [1998] 2 CLJ 370). A guilty plea cannot also be a powerful mitigating factor when effectively no defence to the charge is available to the accused (see *PP v Low Kok Wai* [1988] 2 CLJ 105; [1988] 2 CLJ (Rep) 268). If a plea of guilty is made too late in the trial it may also cease to have mitigating effect (see *PP v Dato' Nallakaruppan Solaimalai* [1999] 2 CLJ 596). The absence of mitigating factors in favour of the accused like, for instance, the existence of previous convictions may also deprive the guilty plea of its effect. There can therefore be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment (see *PP v Tia Ah Leng* [2000] 5 CLJ 614). Be that as it may, where there is a departure from the general rule the reason for not treating the guilty plea as a mitigating factor must be reflected in the grounds of judgment (see *Tan Lay Chen v PP* [2000] 4 CLJ 492).

[16] The learned deputy submitted that the learned trial judge had also considered the seriousness of the offence committed by the appellant in this case. Section 39A(2) of the Act provides that the minimum imprisonment terms of 5 years and a maximum of 30 years imprisonment. The appellant was sentenced to 13 years imprisonment from the date of arrest and 10 strokes of whipping. He submitted further that lenient sentence should not be accorded to drug offenders. He cited the case of *Public Prosecutor v Ooi Teng Chian* [2006] 1 MLJ 213, where Justice Augustine Paul said, at p 229, para E–F:

> It is well established that sentencing in drug offences must reflect the public interest to be served as it is an on-going national problem. The weight of the drugs involved

is another factor to be considered. In this case, the amount of dangerous drugs involved is very substantial. In such circumstances, neither the guilty plea of the accused nor the fact that he is a first offender can be considered too favourably in favour of the accused.

[17] Having perused the notes of evidence, we noted that the alternative charge (P3) was tendered in court by the learned deputy on the first day of the trial. Learned counsel for the appellant requested for the alternative charge to be read to the appellant on another date and the case went on with the trial. We agreed with the learned trial judge's findings that since the appellant opted to claim trial on the principal charge and keeping in abeyance the alternative charge, the appellant's subsequent plea of guilty after trial had commenced was not a mitigating factor in the determination of sentence/punishment.

[18] Although the appellant's plea of guilty was made at the early stage of trial and after only one witness was called, having perused the notes of evidence, we found that learned counsel for the appellant had only applied for the alternative charge P3, to be read and explained to the appellant be deferred to another date – see p 26 appeal record:

Peguam OKT:

Pohon Pertuduhan Pilihan, P3 ditunda ke tarikh lain untuk dibaca dan diterangkan kepada OKT.

Learned counsel for the appellant did not apply for the hearing on the principal charge be deferred/postponed to the same date as the alternative charge. We noted that the case was fixed for trial for two days, that is, on the 29 January 2014 and 30 January 2014. The appellant could have applied for a short adjournment to the next day in order to consider the alternative charge and give instructions to his counsel.

[19] Moving on to the second issue, it was submitted by the appellant that the weight of the drugs was the most important factor in sentencing drug offences. The appellant's counsel submitted the case of *Pendakwa Raya lwn Abdul Halim Ishak & Satu lagi* [2013] 9 CLJ 559 . In this case the accused persons were charged under s 39B of the Act with an alternative charge under s 6 and punishable under s 39A(2) of the Act. The impugned drugs was 11,120g of cannabis. Both the accused pleaded guilty to the alternative charge. The High Court imposed the sentence of seven years imprisonment from the date of arrest and ten strokes whipping against the first respondent and sentence of six years imprisonment from the date of arrest and ten strokes whipping against the second respondent. The prosecution appealed against the sentences on the ground that the learned High Court judge had erred in law and in fact in failing to consider that the life sentence provided under s 39A(2) of the Act had been amended by the Criminal Justice (Amendment) Act 2007

(Act A1302) which was effective from 7 September 2007, that is, from 20 years to 30 years. The Court of Appeal enhanced the sentence of the first respondent to 14 years imprisonment and 10 strokes of whipping and also enhanced the sentence of the second respondent to 13 years of imprisonment and 10 strokes of whipping.

[20] Taking the above case as comparison, the appellant submitted that in that case the weight of cannabis was 11,120g which is 222.4 times more than the minimum weight under s 39A(2) of the Act, as compared to 202.24g of cannabis in the current case. Therefore the sentence imposed by the learned trial judge was manifestly excessive as the judge failed to consider the trend of sentencing of the court.

[21] In response, the learned deputy submitted that the imprisonment term imposed on the appellant was not excessive and it showed the seriousness of the crime committed by the appellant. The court has to strike a balance between the interest of the appellant and the public. Public interest must take precedence over the appellant's interest, especially in cases involving drugs. In the case of *Tia Ah Leng v Public Prosecutor* [2004] 4 MLJ 249 Mokhtar Sidin JCA (as he then was) at p 254 held that:

> [9] It is true that the general rule is, when imposing a sentence, the court should take into consideration the fact that an accused person who has pleaded guilty be given certain credit and discount, but we are of the view that there are exceptions to this rule. In our opinion, one of these are the offences under the Dangerous Drugs Act 1952. The Government and the legislature have taken very serious views in the abuse of usage of dangerous drugs. Drug addictions are rampant and the Government as well as the legislature have tried to curb these addictions especially amongst youths but met with little success. Death sentences and heavy penalties have been introduced but we find drug addicts everywhere. The addiction to drugs have led to other offences such as thefts, burglary and snatch thefts. Some of these offences lead to serious consequences. We have read in the newspapers that some drug addicts have gone to the extent of hurting their own families such as their mothers, sisters and grandmothers in order to get some money to purchase the drugs to support their addictions. Recently, a woman died when a snatcher snatched her handbag and she was dragged together with the handbag some distance away and as a result of that she died.
>
> [10] In our view, the source of all these evils are the drug traffickers and the drug peddlers. They are the ones who have been trafficking, selling and peddling the drugs to those drug addicts. It is public knowledge that the return in this type of business is very lucrative.
>
> [11] The seriousness of the offences on drugs have been made known since the seventies. Eminent judges have expressed this in so many cases ...

[22] The learned deputy further submitted that the punishment imposed by the learned trial judge was in conformity with the sentencing trend for offences

under s 39A(2) of the Act. He cited a few authorities where the accused person pleaded guilty to the charge for our comparison and easy reference as follows:

Case	Facts	Sentence
PP v Marzuki bin Kahar *C-05(S)-67-2/2013* C.O.A. (13 December 2013)	Plead Guilty Drugs 232.05g Cannabis High Court : 7 years and 10 strokes whipping On appeal to the Court of Appeal: 11 years and 10 strokes	11 years imprisonment and 10 strokes of whipping (10 April 2012)
Abu Hurairah Abu Samah *J-05-121-2010* C.O.A. (14 April 2011)	Plead Guilty Drugs 255.2 gram	11 years imprisonment and 10 strokes of whipping
Ridzuan bin Abu Shukor v PP *A-05-57-2008* (25 January 2011)	Plead Guilty Drugs 1,008.5 gram Cannabis High Court : 10 years and 10 strokes On appeal to Court of Appeal : Affirmed	10 years imprisonment and 10 strokes of whipping.

[23] Deliberating the table presented above, we agreed with the submission forwarded by the learned deputy that heavy punishment should be given to drug-related offence. We found that the learned trial judge had correctly imposed a heavy punishment on the appellant in this case. This is in line with the amendment to the life imprisonment term under s 39A(2) of the Act which had been amended by the Criminal Justice (Amendment) Act 2007 (Act A1302). Therefore the punishment of 13 years imprisonment and 10 strokes whipping from the date of arrest was a clear reflection of the seriousness of the crime committed by the appellant.

[24] In the final analysis, the learned trial judge in arriving at the appropriate sentence had considered the interests of the public which requires a deterrent sentence on the appellant considering the weight of the drugs in this case. The fact that the appellant was a first offender and the other mitigating factors raised by him had also been considered by the learned trial judge. We concluded that the learned trial judge had applied the correct principles of sentencing to the appellant. As such, we could not find any ground to disturb the sentence imposed by the learned judge. The appeal was dismissed and we affirmed the sentence of the learned trial judge. As for the appellant's request that he be given more strokes of whipping for a lesser term of imprisonment, we again found that we do not have any reason to disturb the finding of the learned trial judge. He erred in principles in refusing to do so.

Appeal dismissed; decision of the High Court affirmed.

Reported by Afiq Mohamad Noor